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ATTORNEY GENERAL
STATE OF ILLINOIS

September 24, 1992

FILE NO. 92-019

COUNTIES:

Expenditures from Emergency
Telephone System Fund;
Conflict of Interest - County
Board Member and County Emergency
Telephone System Employee

Honorable Michael J. Herr
State's Attorney, Mercer County
Mercer County Courthouse
Aledo, Illinois 61231

Dear Mr. Herr:

I have your letter wherein you inquire whether an emergency telephone system board may properly expend monies received pursuant to section 15.3 of the Emergency Telephone System Act (Ill. Rev. Stat. 1991, ch. 134, par. 45.3) for the purchase and erection of street signs and road markers. In addition, you also inquire whether there would be a prohibited conflict of interest if a county board member also serves as the paid coordinator of a county's emergency telephone system. For the reasons hereinafter stated, it is my opinion that

monies held in the emergency telephone system fund may not be used to purchase and to erect street signs. Further, it is my opinion that a county board member would violate section 3 of the Public Officer Prohibited Activities Act (Ill. Rev. Stat. 1991, ch. 102, par. 3) if he or she also served as the system's 9-1-1 coordinator.

The Emergency Telephone System Act (Ill. Rev. Stat. 1991, ch. 134, par. 30.01 et seq.) was enacted to assist law enforcement officers and other public safety personnel in providing quick and efficient police, fire, medical, rescue and other emergency services. (Ill. Rev. Stat. 1991, ch. 134, par. 31.) Under the terms of the Act, every local public agency in a county having 100,000 or more inhabitants is required to establish and operate a basic or sophisticated emergency telephone system (Ill. Rev. Stat. 1991, ch. 134, par. 33), that being, a telephone service which, at a minimum, automatically connects a person dialing the digits "911" to an established public safety answering point through normal telephone service facilities. (Ill. Rev. Stat. 1991, ch. 134, pars. 32.07 and 32.08.) Other public agencies are authorized but not required, to implement emergency telephone systems. (Ill. Rev. Stat. 1991, ch. 134, par. 33.) The term "public agencies" includes all units of local government which are empowered to provide emergency services. (Ill. Rev. Stat. 1991, ch. 134, par. 32.01.)

In order to implement its emergency telephone system, the corporate authorities of a municipality or county are authorized, with referendum approval, to impose a monthly surcharge on the billed subscribers of network connection telecommunications carriers. (Ill. Rev. Stat. 1991, ch. 134, par. 45.3.) Those corporate authorities which impose such a surcharge are required to appoint an emergency telephone system board. (Ill. Rev. Stat. 1991, ch. 134, par. 45.4(a).) The board is responsible for coordinating and supervising the implementation and operation of the emergency telephone system and for directing the expenditure of surcharge monies which are held in the emergency telephone system fund. (Ill. Rev. Stat. 1991, ch. 134, par. 45.4(b).) Subsection 15.4(c) of the Act (Ill. Rev. Stat. 1991, ch. 134, par. 45.4(c)), which governs expenditures from the fund, provides, in pertinent part:

" * * *

All monies received by a board pursuant to a surcharge imposed under Section 15.3 shall be deposited into a separate interest-bearing Emergency Telephone System Fund account. The treasurer of the municipality or county that has established the board or, in the case of a joint board, any municipal or county treasurer designated in the intergovernmental agreement, shall be custodian of the fund. All interest accruing on the fund shall remain in the fund. No expenditures may be made from such fund except upon the direction of the board by resolution passed by a majority of all members of the board. Expenditures may be made only to pay for the costs associated with the following:

- (1) The design of the Emergency Telephone System.

(2) The coding of an initial Master Street Address Guide data base, and update and maintenance thereof.

* * *

(6) Other products and services necessary for the implementation, upgrade and maintenance of the system and any other purpose related to the operation of the system, including costs attributable directly to the construction, leasing, or maintenance of any buildings or facilities or costs of personnel attributable directly to the operation of the system. Costs attributable directly to the operation of an emergency telephone system do not include the costs of public safety agency personnel who are and equipment that is dispatched in response to an emergency call.

* * *

(Emphasis added.)

Section 15.4 of the Act does not expressly authorize the expenditures of surcharge funds for the erection of street signs. Under the language of subsection 15.4(c)(6) of the Act, expenditures from the Emergency Telephone System Fund are limited to those products and services which are necessary for the operation and maintenance of an emergency telephone system. Although the term "system" is not defined in the Act, where a word is used in different sections of the same Act, there is a presumption that it is used with the same meaning throughout, unless a contrary legislative intent is clearly expressed. (People ex rel. Scott v. Schwulst Bldg. Center, Inc. (1982), 89 Ill. 2d 365.) The term "system", as used in

the Act, refers to the basic or sophisticated telephone service which automatically connects a person dialing the digits "911" to an established public safety answering point. (See Ill. Rev. Stat. 1991, ch. 134, pars. 33, 36.)

Given this meaning, the language of subsection 15.4(c)(6) of the Act indicates that the General Assembly contemplated that monies in the emergency telephone system fund would be expended only to cover costs specifically associated with the operation and maintenance of a telephone service for handling emergency service requests. The language of the Act does not encompass costs which are attributable to increasing the operational efficiency of an emergency services program generally. Although the erection of street signs may be a desirable aspect of improving emergency response, it is not necessary for the implementation, upgrade or maintenance of an emergency telephone system. Therefore, it is my opinion that street signs may not be purchased and erected with monies held in the emergency telephone system fund.

You also inquire whether there would be a prohibited conflict of interest if a county board member were to serve as the paid coordinator of a county's emergency telephone system. Section 3 of the Public Officer Prohibited Activities Act provides, in pertinent part:

"No person holding any office, either by election or appointment under the laws or

constitution of this state, may be in any manner interested either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. * * *

* * *

(Emphasis added.)

In interpreting the language quoted above, the Illinois Supreme Court has stated that section 3 of the Act is intended to prohibit interests which prevent or tend to prevent a public official from impartial or faithful service. (People v. Adduci (1952), 412 Ill. 621, 627.) Further, the court has stated that the language of section 3 addresses not only the actual bad-faith abuse of power for an officer's own personal benefit, but also is designed to prevent the creation of relationships which carry the potential for abuse. (Brown v. Kirk (1976), 64 Ill. 2d 144, 151.) Thus, the central concern of the Act is the existence of competing interests or loyalties which could hamper a person's performance as a public officer. Croissant v. Joliet Park District (1990), 141 Ill. 2d 449, 458.

The emergency telephone system board has no independent power of taxation. The level of funding for a county

emergency telephone system, therefore, is dependent upon the county board. (Ill. Rev. Stat. 1991, ch. 134, par. 45.3(c); Ill. Att'y Gen. Op. 91-028, issued July 26, 1991.) Because of this funding relationship between a county and a county Emergency Telephone System Board, a county board member would be required to vote upon the levy of a tax from the proceeds of which his or her contract as an employee of the emergency service system would be paid. This would create a pecuniary interest which section 3 of the Act is intended to prohibit.

I also note that under section 15.4 of the Emergency Telephone System Act (Ill. Rev. Stat. 1991, ch. 134, par. 45.4), the corporate authorities of a county or municipality which imposes a surcharge are required to appoint the emergency telephone system board, the powers and duties of which include employing necessary services for the operation of the emergency telephone system. Consequently, the county board member in question would be required to vote on the appointment of members of the emergency system board who, in turn, will be responsible for contracting with persons whose services are necessary for the operation of the emergency telephone system, such as a 9-1-1 coordinator. This creates competing interests which would hamper a county board member in the full and faithful performance of his or her duties. See, Rogers v. Village of Tinley Park (1983), 116 Ill. App. 3d 437.

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For the reasons stated, it is my opinion that a violation of section 3 of the Public Officer Prohibited Activities Act will occur if a county board member is also employed as a paid employee of the emergency telephone system for the county which he or she serves.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL